

Page 1 of 2

RESPONDENT NAME: COWCATCHERS, L.L.C

| | | |
|--|---|---|
| ORDER TYPE: | | |
| <input type="checkbox"/> 1660 AGREED ORDER | <input type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER | <input type="checkbox"/> SHUTDOWN ORDER | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER | <input type="checkbox"/> EMERGENCY ORDER | |
| CASE TYPE: | | |
| <input type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE |
| <input checked="" type="checkbox"/> PUBLIC WATER SUPPLY | <input type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |
| <p>SITE WHERE VIOLATION(S) OCCURRED: 1100 Bulverde Road, Bulverde, Comal County</p> <p>TYPE OF OPERATION: Restaurant with a public water supply system</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 13, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p>TCEQ Attorney: Mr. Rudy Calderon, Litigation Division, MC 175, (512) 239-0205 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p>TCEQ Enforcement Coordinator: Ms. Trina Grieco, Air Enforcement Section, MC R-13, (210) 403-4006</p> <p>TCEQ Regional Contact: Mr. Tom Haberle, San Antonio Regional Office, MC R-13, (210) 403-4050</p> <p>Respondent: Mr. Bradley Kevin Holt, Manager, Cowcatchers, L.L.C., 1100 Bulverde Rd., Bulverde, TX 78163-4811</p> <p>Respondent's Attorney: Not represented by counsel on this enforcement matter.</p> | | |

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|---|---|
| <p>Type of Investigation:</p> <p> <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review </p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 1, 2007</p> <p>Date of NOE Relating to this Case: October 30, 2007</p> <p>Background Facts: The EDP RP was filed on March 13, 2008. It was sent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating the Respondent received notice of the EDP RP. The Respondent has failed to answer the EDP RP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondent is not yet in compliance.</p> <p>PWS:</p> <p>Failed to collect and submit routine monthly water samples for bacteriological analysis and failed to provide public notice of the failure to sample during the months of September 2006 through May 2007 [30 TEX. ADMIN. CODE § § 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d)].</p> | <p>Total Assessed: \$3,757</p> <p>Total Deferred: \$0</p> <p> <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset </p> <p>Total Due to General Revenue: \$3,757</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>Site Compliance History Classification N/A</p> <p>Person Compliance History Classification N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Technical Requirements:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 10 days: <ol style="list-style-type: none"> Begin collecting bacteriological samples at the required frequency based on the population served by the system. Implement procedural changes and train staff to ensure necessary public notifications are provided to customers. Within 45 days, submit written certification to demonstrate compliance with these Ordering Provisions. |



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision September 19, 2007

TCEQ

DATES Assigned 24-Sep-2007
 PCW 26-Sep-2007 Screening 27-Sep-2007 EPA Due 31-May-2007

RESPONDENT/FACILITY INFORMATION

Respondent Cowcatchers, L.L.C.
 Reg. Ent. Ref. No. RN104633995
 Facility/Site Region 13-San Antonio Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 34707 No. of Violations 1
 Docket No. 2007-1578-PWS-E Order Type Findings
 Media Program(s) Public Water Supply Enf. Coordinator Trina Grieco
 Multi-Media EC's Team Enforcement Team 5
 Admin. Penalty \$ Limit Minimum \$50 Maximum \$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$2,250

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 47% Enhancement Subtotals 2, 3, & 7 \$1,057

Notes Penalty enhancement due to nine NOVs issued for same or similar violations, and one NOV issued for non-similar violations.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

| | Before NOV | NOV to EDPRP/Settlement Offer |
|---------------|------------|-------------------------------|
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with x) |

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$536 0% Enhancement Subtotal 6 \$0
 Approx. Cost of Compliance \$1,450 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$3,307

OTHER FACTORS AS JUSTICE MAY REQUIRE 14% Adjustment \$450

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Enhancement recommended for recovery of avoided costs of compliance.

Final Penalty Amount \$3,757

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$3,757

DEFERRAL 0% Reduction Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral is recommended for Findings Orders.

PAYABLE PENALTY \$3,757

Screening Date 27-Sep-2007

Docket No. 2007-1578-PWS-E

PCW

Respondent Cowcatchers, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 34707

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN104633995

Media [Statute] Public Water Supply

Enf. Coordinator Trina Grieco

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) | 9 | 45% |
| | Other written NOVs | 1 | 2% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 47%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Penalty enhancement due to nine NOVs issued for same or similar violations, and one NOV issued for non-similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 47%

Screening Date 27-Sep-2007

Docket No. 2007-1578-PWS-E

PCW

Respondent Cowcatchers, L.L.C.

Policy Revision 2 (September 2007)

Case ID No. 34707

PCW Revision September 19, 2007

Reg. Ent. Reference No. RN104633995

Media [Statute] Public Water Supply

Enf. Coordinator Trina Grieco

Violation Number

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and Tex. Health & Safety Code § 341.033(d)

Violation Description

Failed to collect and submit routine monthly water samples for bacteriological analysis and failed to provide public notice of the failure to sample during the months of September 2006 through May 2007.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|--------------------------------|----------------------|----------------------|
| | Major | Moderate | Minor |
| Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Potential | <input type="text" value="x"/> | <input type="text"/> | <input type="text"/> |

Percent

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|----------------------|----------------------|----------------------|----------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |

Percent

Matrix Notes

Failure to perform bacteriological monitoring could result in customers of the water supply being exposed to a significant amount of undetected contaminants which would exceed levels that are protective of human health.

Adjustment

Violation Events

Number of Violation Events Number of violation daysmark only one
with an x

| | |
|--------------|--------------------------------|
| daily | <input type="text"/> |
| monthly | <input type="text" value="x"/> |
| quarterly | <input type="text"/> |
| semiannual | <input type="text"/> |
| annual | <input type="text"/> |
| single event | <input type="text"/> |

Violation Base Penalty

Nine monthly events are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount Violation Final Penalty Total This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Cowcatchers, L.L.C.
Case ID No. 34707
Reg. Ent. Reference No. RN104633995
Media Public Water Supply
Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|---------|------------|------------|-----|------|-----|------|
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | \$1,000 | 1-Jun-2007 | 1-Jun-2008 | 1.0 | \$50 | n/a | \$50 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to conduct monthly bacteriological sampling and provide public notification. Date required is the first day of the month after the last violation was documented. Final date is the date corrective actions are projected to be completed.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|-------|-------------|-------------|-----|------|-------|-------|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | \$450 | 30-Sep-2006 | 31-May-2007 | 1.6 | \$36 | \$450 | \$486 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Estimated cost to conduct monthly bacteriological sampling and provide public notification. Date required is the last day of the month during which the violations occurred. Final date is the last day of the month during which the violations were last documented.

Approx. Cost of Compliance

\$1,450

TOTAL

\$536

Compliance History

| | | | | |
|---|--|-------------------------------|---------------------|------------------|
| Customer/Respondent/Owner-Operator: | CN603204553 | Cowcatchers, L.L.C. | Classification: N/A | Rating: N/A |
| Regulated Entity: | RN104633995 | COWCATCHERS STEAKS RESTAURANT | Classification: N/A | Site Rating: N/A |
| ID Number(s): | PUBLIC WATER SYSTEM/SUPPLY | REGISTRATION | 6001475 | |
| | PUBLIC WATER SYSTEM/SUPPLY | REGISTRATION | 0460254 | |
| Location: | 1100 BULVERDE RD, BULVERDE, TX, 78163 | | | |
| TCEQ Region: | REGION 13 - SAN ANTONIO | | | |
| Date Compliance History Prepared: | September 27, 2007 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | September 27, 2002 to September 27, 2007 | | | |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History | | | | |
| Name: | Trina Grieco | Phone: | (210) 403-4006 | |

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Trk. No.)

| | | |
|----|------------|----------|
| 1 | 08/24/2006 | (484101) |
| 2 | 10/25/2006 | (567935) |
| 3 | 11/21/2006 | (569834) |
| 4 | 12/21/2006 | (569837) |
| 5 | 01/26/2007 | (570081) |
| 6 | 02/21/2007 | (569859) |
| 7 | 03/29/2007 | (570086) |
| 8 | 04/25/2007 | (570112) |
| 9 | 05/25/2007 | (570121) |
| 10 | 06/25/2007 | (570127) |
| 11 | 09/21/2007 | (571211) |

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/01/2006 (484101)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)

Description: Failure to protect the well unit with an intruder-resistant fence or a locked, ventilated well house to exclude possible contamination or damage to the facilities by trespassers.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.43(e)

Description: Failure to enclose the potable water storage tanks with an intruder-resistant fence with lockable gates or a locked, ventilated house.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)

Description: Failure to submit well completion data on the well for our review and approval.

Date: 10/25/2006 (567935)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

Description: 09/2006- Failure to collect any routine monitoring sample(s) for 09/2006.

| | | | |
|--------------|--|----------------|----------|
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B) | | |
| Description: | 09/2006 - Failure to post PN for not collecting any routine monitoring sample(s) in 09/2006. | | |
| Date: | 11/21/2006 | (569834) | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) | | |
| Description: | 10/2006 - Failure to collect any routine monitoring sample(s) for 10/2006. | | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B) | | |
| Description: | 10/2006 - Failure to post PN for not collecting any routine monitoring sample(s) in 10/2006. | | |
| Date: | 12/21/2006 | (569837) | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) | | |
| Description: | 11/2006 - Failure to collect any routine monitoring sample(s) for 11/2006. | | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B) | | |
| Description: | 11/2006 - Failure to post PN for not collecting any routine monitoring sample(s) in 11/2006. | | |
| Date: | 01/26/2007 | (570081) | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) | | |
| Description: | 12/2006 - Failure to collect any routine monitoring sample(s) for 12/2006. | | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B) | | |
| Description: | 12/2006 - Failure to post PN for not collecting any routine monitoring sample(s) in 12/2006. | | |
| Date: | 02/21/2007 | (569859) | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) | | |
| Description: | 01/2007 - Failure to collect any routine monitoring sample(s) for 01/2007. | | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B) | | |
| Description: | 01/2007 - Failure to post PN for not collecting any routine monitoring sample(s) in 01/2007. | | |
| Date: | 03/29/2007 | (570086) | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) | | |
| Description: | 02/2007 - Failure to collect any routine monitoring sample(s) for 02/2007. | | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B) | | |
| Description: | 02/2007 - Failure to post PN for not collecting any routine monitoring sample(s) in 02/2007. | | |
| Date: | 04/25/2007 | (570112) | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) | | |
| Description: | 03/2007 - Failure to collect any routine monitoring sample(s) for 03/2007. | | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B) | | |
| Description: | 03/2007 - Failure to post PN for not collecting any routine monitoring sample(s) in 03/2007. | | |
| Date: | 05/25/2007 | (570121) | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) | | |
| Description: | 04/2007 - Failure to collect any routine monitoring sample(s) for 04/2007. | | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B) | | |
| Description: | 04/2007 - Failure to post PN for not collecting any routine monitoring sample(s) in 04/2007. | | |
| Date: | 06/25/2007 | (570127) | |
| Self Report? | NO | Classification | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) | | |
| Description: | 05/2007 - Failure to collect any routine monitoring sample(s) for 05/2007. | | |
| Self Report? | NO | Classification | Moderate |

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: 05/2007 - Failure to post PN for not collecting any routine monitoring sample(s) in 05/2007.

- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
COWCATCHERS, L.L.C.;
RN104633995**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2007-1578-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Cowcatchers, L.L.C. ("Cowcatchers").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Cowcatchers owns and operates a restaurant with a public water supply system located at 1100 Bulverde Road, Bulverde, Comal County, Texas (the "Facility").
2. The Facility provides water for human consumption, has one service connection, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water supply system as defined in 30 TEX. ADMIN. CODE § 290.38(63).
3. During an investigation conducted on June 1, 2007, a TCEQ Central Office investigator documented that Cowcatchers failed to collect and submit routine monthly water samples for bacteriological analysis and failed to provide public notice of the failure to sample during the months of September 2006 through May 2007.
4. Cowcatchers received notice of the violation on or about November 3, 2007.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Cowcatchers, L.L.C." (the "EDPRP") in the TCEQ Chief Clerk's office on March 13, 2008.

6. By letter dated March 13, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Cowcatchers with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Cowcatchers received notice of the EDPRP.
7. More than 20 days have elapsed since Cowcatchers received notice of the EDPRP, provided by the Executive Director. Cowcatchers failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Cowcatchers is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Cowcatchers failed to collect and submit routine monthly water samples for bacteriological analysis and failed to provide public notice of the failure to sample during the months of September 2006 through May 2007, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH AND SAFETY CODE § 341.033(d).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Cowcatchers with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Cowcatchers failed to file a timely answer to the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Cowcatchers and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Cowcatchers for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of three thousand seven hundred fifty-seven dollars (\$3,757.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Cowcatchers is assessed an administrative penalty in the amount of three thousand seven hundred fifty-seven dollars (\$3,757.00) for violations of the Health & Safety Code and the rules of the TCEQ. The payment of this administrative penalty and Cowcatchers's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Cowcatchers, L.L.C.; Docket No. 2007-1578-PWS-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Cowcatchers shall undertake the following technical requirements:
 - a. Within 10 days after the effective date of this Order, Cowcatchers shall:
 - i. Begin collecting bacteriological samples at the required frequency based on the population served by the system, as required by 30 TEX. ADMIN. CODE § 290.109; and
 - ii. Implement procedural changes and train staff to ensure necessary public notifications are provided to customers as required by 30 TEX. ADMIN. CODE § 290.122.

- b. Within 45 days after the effective date of this Order, Cowcatchers shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a.i. and 2.a.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Cowcatchers shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a.i and 2.a.ii. to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Tom Haberle, Water Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Rd.
San Antonio, Texas 78233-4480

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Cowcatchers. Cowcatchers is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Cowcatchers shall be made in writing

to the Executive Director. Extensions are not effective until Cowcatchers receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Cowcatchers if the Executive Director determines that Cowcatchers has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF RUDY CALDERON


STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Rudy Calderon. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Cowcatchers, L.L.C." (the "EDPRP") was filed with the Office of the Chief Clerk on March 13, 2008.

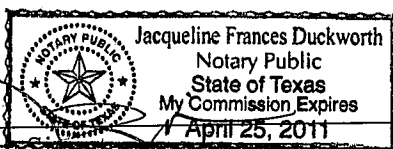
The EDPRP was mailed to Cowcatchers at its last known address on March 13, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Cowcatchers received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Cowcatchers received notice of the EDPRP. Cowcatchers failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."


Rudy Calderon, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 15th day of August, A.D., 2008.


Notary Signature 